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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 1164

MYRTLE A. GARNER, Petitioner,

vs.

GEORGE ALEXANDER

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

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The opinion in the Supreme Court of Oregon is reported in 120 Pac. (2d Series) 238.

The petition for writ of certiorari should be denied for the following reasons:

1. The petition does not present a cause in which is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of the state of Oregon on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

The decision of the Supreme Court of Oregon as to the rights and privileges claimed by petitioner under the Constitution of the United States does not present a Federal question of substance not heretofore determined by this Court, nor decided in a way probably not in accord with applicable decisions of this Court. (R. 3 to 10.)

Jugiro v. Brush, 140 U. S. 291, 293, 297; 35 L. ed. 510, 511, 513.
Keizo v. Henry, 211 U. S. 146; 53 L. ed. 125.
Rogers v. Peck, 199 U. S. 425; 50 L. ed. 256.
Andrews v. Swartz, 156 U. S. 272; 39 L. ed. 422.
Ex parte Wilson, 140 U. S. 575, 582; 35 L. ed. 513, 517.
United States v. Gale, 109 U. S. 63; 27 L. ed. 857.

2. In denying petitioner's motion to dismiss appeal from the Circuit Court of Oregon to the Supreme Court of Oregon the Court construed section 11-443, O. C. L. A., to permit the warden of the Oregon state penitentiary to take such appeal (R. 19). Its decision in that regard does not present a Federal question and is not subject to review by this Court.

Knights of Pythias v. Meyer, 265 U. S. 30, 32; 68 L. ed. 885, 888.
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 680; 74 L. ed. 1107, 1113.

3. Section 11-428, O. C. L. A., as construed by the Supreme Court of Oregon, has no application to appeals from the Circuit Court of Oregon to that Court.

The discharge of the petitioner by the Circuit Court was not final, but subject to review by the Supreme

Court of Oregon, and the final order of the Circuit Court remanding petitioner to the penitentiary was entered pursuant to mandate of the Supreme Court. (R. 25, 26.)

Section 11-415, O. C. L. A., provides:

"It shall be the duty of the court or judge forthwith to remand such party if it shall appear that he is legally detained in custody, either:

* * * * *

"(2) By virtue of the judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or,

* * * * *

"(4) That the time during which such party may be legally detained has not expired."

Neither section 11-415 nor section 11-428, O. C. L. A., is in conflict with the Federal Constitution. The decision of the Supreme Court of Oregon as to their meaning is conclusive upon this Court.

Herndon v. Lowry, 301 U. S. 242, 247; 81 L. ed. 1066, 1069.

Senn v. Tile Layers Protective Association, Local No. 5, 301 U. S. 468, 477, 81 L. ed. 1229, 1235.

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